

Geneva Press Briefing by Harold Hongju Koh and Michael Posner

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Harold Hongju Koh: Let me say on behalf of President Obama and Secretary Clinton how delighted we are to be here. With the Obama administration's renewed focus on the cooperative efforts of the world and rejoining those efforts, Geneva has again emerged as an extremely important place for the United States government. The Assistant Secretary for International Organizations, Esther Brimmer was here at the beginning of this session. As the Legal Adviser I'm here now with Assistant Secretary for Democracy, Human Rights and Labor Michael Posner which in some way presents the three faces of the Human Rights Council for the United States: an international organization with which we are committed to engage; a set of international legal standards that we're committed to observe and to seek observance from others; and a set of human rights standards which were laid down through a process that began in the late 1940s, in which the United States was deeply involved.

Coming shortly, later this week, will be Assistant Secretary Eric Schwartz, the Assistant Secretary for Population, Refugees and Migration. Like me, was also a

former human rights official in the Clinton administration. Michael Parmley modestly does not mention that he was the Principal Deputy Assistant Secretary and also Acting Assistant Secretary for the Bureau of Democracy, Human Rights and Labor in both the Clinton and the George W. Bush administration.

We also have with us Professor Sarah Cleveland who is the Counselor of International Law of the Office of the Legal Adviser. She is the Louis Henkin Professor of Human Rights Law at Columbia University and co-author of a leading case book on international human rights. It's because of our deep commitment on these issues that we've decided that three human rights experts within the U.S. government should be here today.

I would simply quote the words of President Obama both in Cairo and at the UN General Assembly meeting: America is committed to live its values, to be a citizen of the world, to share in our common human rights future, and to participate actively in UN organizations, to reengage in the UN. We have paid our bills, we have joined the Human Rights Council, we have subscribed to the Millennium Development Goals. As you saw last week the President himself not only gave his first speech at the UN General Assembly, but he also chaired the second session on nuclear nonproliferation.

This is a forward-looking attitude. It is a long term approach. It's one that values diplomacy and multilateral engagement. It doesn't assume that there will be universal agreement, but it does assume there will be universal respect for the rights of individuals and for nation states to engage with each other in these fora.

It is this goal of reengaging with the human rights system and particularly the UN Human Rights Council which is the overriding message of our return to Geneva today. There are particular resolutions which we will address in turn as they come up in the course of the session. Assistant Secretary Posner will be here all week. I will be here for a few days and then going on. We'll be doing bilateral meetings. We'll be also meeting with other representatives of

international organizations here in Geneva.

With that, let me turn it over to Assistant Secretary Posner.

Assistant Secretary Posner: Thanks, Harold.

I want to echo just a couple of things that Harold Koh has said.

I was confirmed only last Wednesday and I've made it my first priority to come here to Geneva to represent that the spirit of Cairo lives in Geneva; that we are in fact committed as a government to principled engagement with the UN and the Human Rights Council. I think our efforts with the government of Egypt to promote a resolution at the Council on freedom of expression is emblematic of a new kind of an approach, new kind of alliances, a new level of engagement and participation. We're in it for the long haul. We're committed to advancing a strong human rights agenda, working with multiple partners from all regions of the world.

The second thing that's going to guide our participation here is a commitment to a universal application of human rights standards. To everyone, including ourselves. We are committed in our own dealings with the Council to engaging in the next year, for example, in presenting a set of reports, both under the Universal Periodic Review, and to the Human Rights Committee under the International Covenant on Civil and Political Rights, both of which are due next fall, looking at the United States. We'll engage our government, we'll engage civil society. Our intention is to be able to lead by example.

A third and final point is that we come here with a commitment to fidelity to the truth, to being direct in what we say, both in acknowledging and supporting things that have happened at the Council and are happening that we support and approve of, but also being candid and direct in raising concerns about things that need to be addressed.

So it's very much in that spirit that we're here, and we're really glad to be back.

Question: I have two short questions. The first is to Mr. Koh. Human Rights Watch urged today the United States to support the Goldstone Report which will be submitted tomorrow. Have you taken a decision so far?

My second question is to Mr. Posner. As I see from the short bio that you were a human rights defender, and among the people you defended were human rights defenders in Egypt, have you ever defended the former presidential candidate who was in prison?

Thank you.

Mr. Koh: On the first, let me say that that particular report is coming up tomorrow. We'll be making a statement at that time, and would prefer to wait for that statement to be made to set forth our position.

I will say about Michael Posner, he is perhaps the leading human rights advocate in the world. He founded Human Rights First, previously the Lawyers Committee for Human Rights, in 1976 when he was only 12 years old. [Laughter]. In that capacity he has earned a universal reputation for defending the cause of human rights without regard to politics, religion, race or ethnicity. It is for that reason that he is the obvious choice to have this position.

He won't say these things about himself because his own qualities include great youth and great modesty, but I thought I would say them before he speaks.

Assistant Secretary Posner: I would just add that the same could be said for Harold.

I have worked most of my professional life in the non-governmental sector. A key aspect of what we've done in my previous job, Human Rights First, was to look for ways to amplify the voices of local human rights defenders in Egypt and in countries around the world. I believe very strongly that when we talk about universal application of human rights standards, part of what that envisions is a healthy, robust civil society where freedom of expression, freedom of

association, the right to participate are really essential to making it work.

Question: My question regards Honduras. Brazil has just put a resolution in the Human Rights Council about the situation there. I'd like to know how do you assess the situation on human rights being so close to Honduras.

Then the United States also said that it could help to protect the Brazilian [Enmucadera], so I'd like to know how that could happen, what kind of protection we are talking about.

Finally there has been some disagreement about the right forum to introduce this subject between Brazil and the United States. Ms. Rice said the Security Council wouldn't be the more adequate forum for that. So I'd like to know which one would be.

Mr. Koh: As you know, the crisis in Honduras has been going on now for more than three months. I know this because it happened the day after I came into office, so I kept very close track.

Today may be actually the most delicate moment of all because of the location of the various parties, et cetera.

First on the issue of the Brazilian Embassy, as the international lawyer for the U.S. government, obviously the respect for the inviolability of diplomatic premises is something that the United States is deeply committed to. With regard to the Honduras situation itself, this is something in which we have supported the process being convened and conducted by the former President of Costa Rica, Oscar Arias Sanchez, the Nobel Peace Prize Winner. Our hope is that a solution can be brought about in that setting which can be respectful of the right of democratic governance as well as the human rights of all Hondurans.

Question: In the resolution on freedom of expression that was tabled on Friday, there were four references to the Human Rights Council Resolution in which the Special Rapporteur on Freedom of Expression was instructed to investigate

violations of freedom of expression. Many NGOs have been expressing alarm that the U.S. would have supported, implicitly by tabling this resolution with Egypt, have supported that original instruction to the Special Rapporteur. Do you have any comment on that?

Mr. Koh: As I understand it there's still a back and forth yet about the wording of that resolution.

It is true that the resolution grew out of the spirit of Cairo to which Assistant Secretary Posner referred. Again, the thought driving it was that it should be possible to put the notion of a clash of civilizations behind us. It was never true. There can be a commitment to universal human rights. And that one way to illustrate that is by focusing on a core value, the value of the freedom of expression, which is why there's been close dialogue between the United States government and the government of Egypt on these issues.

I think the freedom of expression is a keystone right. It enables political expression. It enables democratic participation. For that reason we believe that having a resolution that receives broad consensus support within the Council is something very much to be desired.

As always, these matters are being discussed, particular wording issues are being addressed, particular mechanisms are being debated. But until the final version of the resolution is agreed upon we won't have a sense of whether that outcome will have been successfully achieved.

But I do want to specify something very deep and profound. We have a President of the United States who is an African-American when many people believed that was something we would not see in our lifetimes. I say with some degree of pride that he has Asians in his family. He is actually from an Asian-American family. He lived in his early childhood in a Muslim country, Indonesia. This is a person whose rise to leadership in the United States government has been the product of extraordinary opportunity and extraordinary access to human rights.

We have a Secretary of State who spoke on the issue of women's rights as human rights more than 15 years ago at Beijing; whose commitment on issues of human security is comparable to that of Eleanor Roosevelt whose picture is behind us.

So the commitment on these issues runs throughout the U.S. government and also in the selection of individuals to serve in high political positions.

So the overriding themes are the ones that we want to stress. Any particular resolution and the wording of any particular resolution is I think a secondary matter to this broad renewed commitment, which on the one hand may seem like a new attitude, but in fact is the re-creation of an attitude that the U.S. government has traditionally held toward the UN human rights system going back to 1948.

Question: I have a question about your new attitude you were talking about at the Human Rights Council or within the UN system, and you just mentioned the example of the resolution on freedom of expression. You're working with the Egyptian government. Does it mean that you want to change totally the dynamic of the Human Rights Council? Not only relying, for example, on the Western allies such as the European Union or things like that, but working with everybody?

Mr. Koh: I think you may be asking a question of tactics when we're actually responding at the level of principle. What you heard from Assistant Secretary Posner is that we are committed to engagement and dialogue; we're committed to universal standards; and we're committed to telling the whole truth. And we think this is a forum, the Human Rights Council, where those three principles — engagement, universality and the whole truth — can be explored in conjunction with other committed members of the Council.

So we have not been a member of the Council until now. It's an experiment. And we had significant experience with the old Human Rights Commission. I met some of you when I would come for those meetings. But I think our goal is

to pursue those principles.

Now it may well be that on any particular resolution this means we are working closely with any number of different countries, which is to say that this cooperative spirit is one which is designed to create new relationships, not to focus in on old stereotypes.

Assistant Secretary Posner: I would just add to that, that if you go back to what Harold Koh said a moment ago about the freedom of expression resolution, it represents our belief that the values of free expression and the values that support freedom of religion and freedom of faith are not inconsistent. They can be merged. They're reinforcing of one another. There is a view on our part, here working with the Egyptians, that those are values and attitudes that can transcend regional or geographic differences.

That to me is, again, an example of our looking for new alliances, new ways of working. It doesn't mean ignoring old allies or the countries we've worked with more closely in the past. It's broadening the debate and trying to find ways to bridge differences and to create better outcomes.

Question I would like to come back to Honduras and what is going on. It seems that in fact the government has rejected, the de facto government has rejected the OAE mission. The two people were not allowed to come back to the country. They don't want this mission to go on. So you say that in fact for Honduras we have to go on with this setting, but this setting doesn't seem to fit. So what are the, I don't know, the propositions of the United States regarding this particular issue?

The second thing, we have had different human rights reports on the human rights violations there, so what will be your position in this Human Rights Council regarding Honduras and the resolution proposed by Brazil?

Mr. Koh: Again, we would prefer to state our position on particular resolutions as they come up. In some cases, depending on what version comes up of

Resolution A or B, we would have a different view. So I think it would be premature for us to comment on that point.

What I have said earlier is that the Honduras crisis has been a subject of shifting events from day to day. So what you may have reported is the latest situation, but it may not be the final situation. So what we are continuing to do is to support the restoration of democratic governance and the protection of human rights for all Hondurans, and we believe the process which is best able to accomplish that is the process which is being supervised by former President Arias.

Question: You said you don't want to preempt what you're going to be saying tomorrow in the Human Rights Council about the Goldstone Report, but the State Department has already made some comments about what it thinks of the report, so I'd like to ask you about those, if I may.

The comments included one that the report was unfair to Israel. Also criticized the mandate under which the report was commissioned. Is that still the position that you hold on this report?

A second question would be sort of a broader step, looking at your relationship with the Human Rights Council. Will there be any political considerations going into how you deal with this report? Or will you be dealing with it solely on a sort of legalistic basis as you seem to be implying in your opening statement? If you have political considerations going into it, that might undermine what you were saying about wanting to look at it from a purely legal point of view.

Mr. Koh: As Assistant Secretary for Human Rights, and now I'm the Legal Adviser, I don't actually think that the term "legal" means "bad." I actually think that legal standards often capture the spirit of human rights commitments.

I think, again, our full statement will be made tomorrow by Assistant Secretary Posner. I don't want to preempt those. I think Mr. Goldstone himself expressed his own concerns about the mandate when he was given the mandate. He's

been quite open about it and made adjustments in the mandate before proceeding. He calls it the Independent Commission precisely because he was concerned about the way in which the mandate had originally been drawn.

So I think for us to make that point is not to make a point that Judge Goldstone didn't himself make.

Question: If I can just follow up on what Frank asked. Can you explain at least why you think it's unfair to Israel? On the content of the report itself, why does the State Department believe that it's an unfair report?

Secondly, on the issue of Iran, will there be any legal pushes for all the countries in the Middle East to sign onto the NPT? Or will there still be exceptions made?

Mr. Koh: I think on the first question I've answered it, which is that the full position of the U.S. government with regard to the Goldstone Report will be presented tomorrow, so there's not much point in my rehashing a word or two in prior press statements.

On the nuclear nonproliferation matter, the resolution that the President brought to the Security Council and that was adopted makes very clear the U.S. commitment on nuclear nonproliferation which was combined with the extraordinary revelation about the second plant in Iran. So I do believe that the United States considers that to be an extraordinarily important commitment.

If you listen to the President's speech at the UN, his number one issue was a world free of nuclear weapons. Both the NPT and the Resolution play a critical role as a matter of law and as a matter of policy in bringing that outcome about.

Question: Freelance Writer, Newspapers in Europe, North America and Asia.

I have a question. In the mid '90s, in 1994, President Clinton delinked trade and human rights in the case of China. President Obama as a candidate linked trade and human rights vis-à-vis Colombia. I was wondering what's the situation now that he's in the White House? As a candidate he said that he would not ratify an

FTA as long as trade union activists were being assassinated in Colombia. What's the state of play on that issue right now? Thanks.

Mr. Koh: This isn't really a question of human rights policy. I don't think there's a "one size fits all" approach.

What you're talking about in the context of China in 1994, obviously raises entirely separate and different questions from those which may arise with regard to a different country at a different point in time. So the President's policy on these issues I think is pretty clear. He promotes human rights, through engagement. He promotes human rights through diplomacy. He promotes human rights through efforts to find common ground. And he's prepared to do this in both bilateral and multilateral settings.

Often an engagement strategy will involve many different tools being employed at the same time with regard to a single country. And I think that's true of each country with which we have a diplomatic relationship. The two countries you mentioned are among them.

Question: Sorry I didn't get an answer. What's the state of play right now? Because as a candidate he made it very clear he would not support FTA ratification unless the assassinations were decreased dramatically. What's the state of play right now on that issue?

Question: The former administration was quite skeptical about the creation of the Human Rights Council. We could see that here in Geneva that, well, the engagement wasn't very clear. And actually when we had to vote on the final package they were rather against that.

Do you consider the creation of the Human Rights Council as a positive move towards a reinforcement of the human rights system?

Mr. Koh: I think the decision for the United States to engage and to become a party to the Human Rights Council represents our hope that we can work with

the Council to help ensure that it is a positive component of a UN system that promotes human rights. We're new to the scene. We've expressed concerns already, and there was a considerable debate in the United States about the early track record of the Council. But we're here very much in the spirit of working constructively to make it a strong and principled body that actually helps real people.

Question: You said that membership in the Human Rights Council was an experiment for you. Could you outline the parameters of this experiment? What you're hoping to achieve and how it might fail?

Assistant Secretary Posner: I think Harold used the word experiment. I would say we are here to engage, we're here in the long term, we're here to make a positive contribution. That does not mean that we're satisfied with everything the Council has done or is doing. So when Harold says it's an experiment, we are here on the theory that we're going to be an active player and we're going to push for the Council to be as strong a body as it can be. We may not succeed, but we're here for the long term in a serious way to engage.

Mr. Koh: Frank, life is an experiment. Mine has gone on for more than 50 years and I hope I continue experimenting.

I don't think you should take that as a statement that it's temporary, but I do think it's a statement that it's new. Therefore the United States is experiencing membership in the Council for the first time. It has many different dimensions, as you've heard from Assistant Secretary Posner. Some of those we will not actually experience until we ourselves are engaged in them, and our own universal periodic review comes up, for example.

So the full contours and meaning of membership in the Council will be revealed over time and how the Council develops as an institution and what constructive role we can play in that development remains to be seen. That's why we're here.

You have two choices with institutions. You can stay away or you can engage and try to help them serve the purposes for which they were created. I think that's been the approach of this administration. It's not just our approach of the Human Rights Council. It's our approach to the UN system writ large. It's not a statement that any institution is perfect, but these are institutions that exist, they are critically important, and that they deserve the commitment of the United States to focus in on these sets of issues we've described — engagement, universality, and truth telling.

Question: [Inaudible]?

Mr. Koh: We have principles and we have hopes, and that's how we're pursuing this. That's how I pursue this press conference. [Laughter].

Moderator: I will take one more question.

Question: It was in fact regarding Guantanamo, but it's regarding the situation of prisoners that President Obama said there might be some prisoners who cannot be released, who cannot be in fact judged. So regarding this unlimited detention, this might be really contrary to human rights issues. I wonder how you think you could deal with this definition regarding unlimited detention.

Mr. Koh: I think it's best to put it in the overall context. The President in his inaugural address, and he repeated again at the UN General Assembly, made three strong statements. First, that America will live its values, they will make us safer, and they will be true to the principles to which we're committed.

Secondly, that the United States will not participate in or condone the inhumane or cruel treatment of prisoners.

Third, that Guantanamo must be brought to a close.

The President has not wavered from any of those three principles. What he has in fact done is implement those through various steps. Three Executive Orders were issued on January 22nd; a review of conditions on Guantanamo was

simultaneously ordered; there's been a review of detainee files which is ongoing; there's been a report on interrogation and transfer. The U.S. Defense Department has issued a statement saying that any interrogation techniques that will be used must satisfy the Army Field Manual. New procedures for review have been announced in Bagram. The Detention Policy Task Force has announced that it will give its final review in a few months. And the work continues.

It's an effort that's engaging many many parts of the U.S. government at the moment.

This is a full scale review of a policy that came to be over the course of the last eight years, and we are only nine months in to this administration.

Today is Monday. On Saturday the government of Switzerland convened at the ministerial level at the UN General Assembly a session in honor of the 60th Anniversary of the Geneva Conventions. The United States was represented at that session by myself as the Legal Adviser at the State Department, but also Jeh Johnson, the General Counsel of the Defense Department, and also Vice Admiral James Houck, who is the Judge Advocate General of the Navy. We stated again, the clear commitment of the United States on the 60th Anniversary of the Geneva Conventions to the core principles of those conventions and enumerated many of the same steps that I've just described.

So our effort to respect the Geneva Conventions is, again, continuing. The press stories often report on one event or another, but the totality of the picture I think is important to take a look at also.

Question: Does that mean that it's possible that people will be held indefinitely without trial, or without having undergone complete and proper legal procedures? That's not clear from what you just said, sir.

Mr. Koh: I think the President conveyed the possibilities that are being examined in his May 21st speech at the National Archives. That's the guide on

which we're proceeding. Nobody has been firmly and finally placed in any of the categories and the process of review is continuing.

With regard to that category, again, I think the President made clear that that's a difficult category. He doesn't know whether it will exist or not until he detainee review is finally completed.

Voice: Thank you all for coming. I appreciate it.

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